



In the Matter of

Digital Performance Right in Sound  
Recordings Rate Adjustment  
Proceedings

Docket No. 2001-1 CARP DSTRA 2  
Docket No. 2001-2 CARP DTNSRA

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OF  
CONGRESS

## ORDER

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On October 11, 2001, the Copyright Office received a petition from Music Choice, Inc. requesting that the Office consolidate the CARP proceeding to determine reasonable rates and terms for the public performance of sound recording by pre-existing satellite digital audio radio services and pre-existing subscription services with the proceeding to establish rates and terms for the performance of sound recordings by new subscription services. 17 U.S.C. 114. In a Notice published in the **Federal Register**, the Office sought comment on the Music Choice petition. 66 FR 58180 (November 20, 2001). Subsequent to publication of the Notice, Music Choice filed a motion with the Office requesting that its petition be withdrawn because its new subscription service, Backstage Pass, ceased operation on January 2, 2002.

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The Office received comments on consolidation from the Digital Media Association ("DiMA"); the Recording Industry Association of America, Inc., the American Federation of Television and Radio Artists, and the American Federation of Musicians of the United States and Canada (collectively "RIAA"); and XM Satellite Radio, Inc. and Sirius Satellite Radio, Inc. (collectively "XM/Sirius"). DiMA favors consolidation, arguing that it would promote administrative efficiency by reducing substantial duplication in the presentation of evidence and would create a richer evidentiary record that would promote greater consistency in the legal rationales underlying the rates established for each service. RIAA and XM/Sirius oppose consolidation. RIAA submits that the issue has been mooted by the requested withdrawal of Music Choice's petition, and notes that there is no overlap in the identity of the parties (other than RIAA) in the two proceedings. Both RIAA's and XM/Sirius's comments stress that different legal standards to be applied in determining rates for new subscription services versus pre-existing subscription and satellite radio services are likely to complicate a consolidated proceeding rendering it administratively inefficient and inappropriate.

In considering Music Choice's motion to withdraw its petition, we see no reason not to grant it. None of the commenters opposes the motion. The Office does not agree, however, that withdrawal of the petition moots the issue of consolidation. The Office considers the matter of consolidation of like proceedings when it appears that such consolidation might promote economic efficiency, and a motion or petition for consolidation is not a prerequisite to such consideration. With regard to consolidating Docket No. 2001-1 CARP DSTRA 2 with Docket No. 2001-2 CARP DTNSRA, we find consolidation to be unnecessary. First, the participants in the two proceedings are not the same, with the exception of RIAA. Consequently, there will not be multiple parties burdened by the expense of presenting duplicative evidence in both proceedings. The only

party that might face this burden, RIAA, wants separate proceedings. Second, DiMA is not a party in this proceeding and, while it is a trade organization that represents users of sound recordings under 17 U.S.C. 114, it does not purport to represent the views of any of the parties in either proceeding. The sound recording users which did file comments, XM and Sirius, strongly oppose consolidation. On CARP matters such as consolidating proceedings, the views of the parties to the proceedings receive greater weight than those of non-parties. In sum, the Copyright Office will not consolidate Docket No. 2001-1 CARP DSTRA 2 with Docket No. 2001-2 CARP DTNSRA and both proceedings will be handled by separate CARPs.

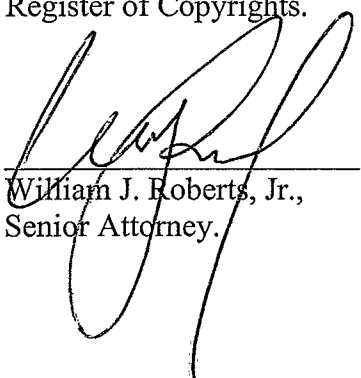
Wherefore, **IT IS ORDERED** that Music Choice's motion to withdraw its petition to consolidate Docket No. 2001-1 CARP DSTRA 2 with Docket No. 2001-2 CARP DTNSRA **IS GRANTED**.

**DATED:** January 28, 2002

**SO ORDERED.**

Marybeth Peters,  
Register of Copyrights.

By:

  
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William J. Roberts, Jr.,  
Senior Attorney.